

UNITED STATES DISTRICT COURT
Northern District of California
1301 Clay Street
Oakland, California 94612

www.cand.uscourts.gov

Richard W. Wieking
Clerk

March 23, 2010

2010 MAR 25 P 3:37
General Court Number
510.637.3530

United States District Court
District of Nevada
333 Las Vegas Blvd., South
Las Vegas, NV 89101

2:10-cv-00422-LRH-LRL

RE: CV 09-05169 PJH Adobe Sysems Incorporated-v-Christensor

Dear Clerk,

Pursuant to an order transferring the above captioned case to your court, transmitted herewith are:

- ☒ Certified copy of docket entries.
- ☒ Certified copy of Transferral Order.
- ☒ Please access the electronic case file for additional pleadings you may need. See the attached instructions for details.

Please acknowledge receipt of the above documents on the attached copy of this letter.

Sincerely,
RICHARD W. WIEKING, Clerk

Vkyono

by: Valerie Kyono
Case Systems Administrator

Enclosures
Copies to counsel of record

ADRMOP, AO279, CLOSED, E-Filing, MEDIATION

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:09-cv-05169-PJH
Internal Use Only**

Adobe Sysems Incorporated v. Christenson et al
Assigned to: Hon. Phyllis J. Hamilton
Cause: 17:101 Copyright Infringement

Date Filed: 10/30/2009
Date Terminated: 03/08/2010
Jury Demand: Plaintiff
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

Adobe Sysems Incorporated

represented by **J. Andrew Coombs**
J. Andrew Coombs
A Professional Corporation
517 East Wilson Avenue
Suite 202
Glendale, CA 91206
818-500-3200
Fax: 818-500-3201
Email: andy@coombspc.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicole Lynn Drey
J. Andrew Coombs
A Professional Corporation
517 East Wilson Avenue
Suite 202
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818-500-3200
Fax: 818-500-3201
Email: nicole@coombspc.com
ATTORNEY TO BE NOTICED

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST:

RICHARD W. WIEKING
Clerk, U.S. District Court
Northern District of California

By: [Signature]
Date: 3/23/10

V.

Defendant

















Joshua Christenson
*an individual and
doing business as*
www.softwaresurplus.com















represented by **Lisa Ann Rasmussen**
Law Office of Lisa Rasmussen
616 South 8th Street
Las Vegas, NV 89101
702-471-6565
Fax: 702-471-6540
Email: lisa@lrasmussenlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED







Defendant

Software Surplus, Inc

represented by **Lisa Ann Rasmussen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/30/2009	 <u>1</u>	COMPLAINT for Copyright Infringement and Trademark Infringement (Summons Issued); jury demand; against Joshua Christenson, Software Surplus, Inc (Filing fee \$ 350, receipt number 54611006248). Filed by Adobe Sysems Incorporated. (Attachments: # <u>1</u> Civil Cover Sheet) (bw, COURT STAFF) (Filed on 10/30/2009) (Entered: 11/02/2009)
10/30/2009	 <u>2</u>	Declination to Proceed Before a U.S. Magistrate Judge and Request for Reassignment to a United States District Judge by Adobe Sysems Incorporated. (bw, COURT STAFF) (Filed on 10/30/2009) (Entered: 11/02/2009)
10/30/2009	 <u>3</u>	Summons Issued as to Joshua Christenson, Software Surplus, Inc. (bw, COURT STAFF) (Filed on 10/30/2009) (Entered: 11/02/2009)
10/30/2009	 <u>4</u>	ADR SCHEDULING ORDER: Case Management Statement due by 2/23/2010. Case Management Conference set for 3/2/2010 01:30 PM. (Attachments: # <u>1</u> Judge Howard R. Lloyd Standing Order re Initial Case Management and Discovery Disputes, # <u>2</u> Standing Order Regarding Case Management in Civil Cases for all San Jose Judges, # <u>3</u> Standing Orders for All Judges of the Northern California District Court) (bw, COURT STAFF) (Filed on 10/30/2009) (Entered: 11/02/2009)
10/30/2009		CASE DESIGNATED for Electronic Filing. (bw, COURT STAFF) (Filed on 10/30/2009) (Entered: 11/02/2009)
10/30/2009	 <u>6</u>	NOTICE of Interested Parties (Civil Local Rule 3-16(c)(1) by Adobe Sysems Incorporated (bw, COURT STAFF) (Filed on 10/30/2009) (Entered: 11/02/2009)
11/02/2009	 <u>5</u>	REPORT on the filing or determination of an action regarding Trademark Infringement (cc: form mailed to register). (bw, COURT STAFF) (Filed on 11/2/2009) (Entered: 11/02/2009)
11/02/2009	 <u>7</u>	REPORT on the filing or determination of an action regarding Copyright Infringement (cc: form mailed to register). (bw, COURT STAFF) (Filed on 11/2/2009) (Entered: 11/02/2009)
11/02/2009	 <u>8</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (pmc, COURT STAFF) (Filed on 11/2/2009) (Entered: 11/02/2009)
11/02/2009		(Court only) ***Deadlines terminated. (pmc, COURT STAFF) (Filed on 11/2/2009) (Entered: 11/02/2009)
11/02/2009	 <u>9</u>	ORDER REASSIGNING CASE. Case reassigned to District Judge Phyllis J. Hamilton for all further proceedings. Magistrate Judge Howard R. Lloyd no longer assigned to the case.Signed by The Executive Committee on 11/02/09. (tsh, COURT STAFF) (Filed on 11/2/2009) (Entered: 11/03/2009)
11/03/2009	 <u>10</u>	ORDER SETTING CASE MANAGEMENT CONFERENCE. Signed by Judge Phyllis J. Hamilton on 11/3/09. (nah, COURT STAFF) (Filed on 11/3/2009) (Entered: 11/03/2009)
11/03/2009		Set Deadlines/Hearings: Joint Case Management Statement due by 2/25/2010. Initial Case Management Conference set for 3/4/2010 02:00 PM. (nah, COURT STAFF) (Filed on 11/3/2009) (Entered: 11/03/2009)
12/21/2009	 <u>11</u>	NOTICE of Appearance by Lisa Ann Rasmussen <i>on behalf of Defendants</i> (Rasmussen, Lisa) (Filed on 12/21/2009) (Entered: 12/21/2009)
12/21/2009	 <u>12</u>	MOTION to Dismiss <i>for Lack of Venue, or, in the Alternative, to Transfer Venue</i> , filed by Joshua Christenson, Software Surplus, Inc. Motion Hearing set for 2/3/2010 09:00 AM in Courtroom 3, 3rd Floor, Oakland. (Rasmussen, Lisa) (Filed on 12/21/2009) Modified on 12/28/2009 (vlk, COURT STAFF). (Entered: 12/21/2009)
12/21/2009	 <u>13</u>	Memorandum in Support re <u>12</u> MOTION to Dismiss <i>for Lack of Venue, or, in the Alternative, to Transfer Venue</i> , filed by Joshua Christenson, Software Surplus, Inc. (Attachments: # <u>1</u> Exhibit A: Declaration of Joshua Christenson in Support of Memorandum Re: Motion to Dismiss and/or Transfer Venue, # <u>2</u> Exhibit B: Declaration of Lisa A.

		Rasmussen, Esq., in support of Memorandum Re: Motion to Dismiss and/or Transfer Venue)(Related document(s) <u>12</u>) (Rasmussen, Lisa) (Filed on 12/21/2009) Modified on 12/22/2009 (vlk, COURT STAFF). (Entered: 12/21/2009)
12/24/2009	 <u>14</u>	Amended <u>12</u> MOTION to Dismiss <i>for Lack of Venue, or, in the Alternative, to Transfer Venue, to Correct Hearing Date</i> , filed by Joshua Christenson, Software Surplus, Inc. Motion Hearing set for 2/3/2010 09:00 AM in Courtroom 3, 3rd Floor, Oakland. (Rasmussen, Lisa) (Filed on 12/24/2009) Modified on 12/28/2009 (vlk, COURT STAFF). (Entered: 12/24/2009)
01/07/2010	 <u>15</u>	STIPULATION re Continuance of Hearing re <u>14</u> MOTION to Dismiss for Lack of Jurisdiction by Adobe Sysems Incorporated. (Drey, Nicole) (Filed on 1/7/2010) Modified on 1/8/2010 (vlk, COURT STAFF). (Entered: 01/07/2010)
01/11/2010	 <u>16</u>	STIPULATION AND ORDER RE CONTINUANCE OF HEARING ON MOTION TO DISMISS re <u>15</u> Stipulation filed by Adobe Sysems Incorporated. Signed by Judge Phyllis J. Hamilton on 1/11/10. (nah, COURT STAFF) (Filed on 1/11/2010) (Entered: 01/11/2010)
01/11/2010		Set/Reset Hearings: Hearing on re <u>14</u> Motion to Dismiss set for 2/10/2010 09:00 AM in Courtroom 3, 3rd Floor, Oakland. (vlk, COURT STAFF) (Filed on 1/11/2010) (Entered: 01/12/2010)
01/20/2010	 <u>17</u>	Memorandum in Opposition re <u>14</u> MOTION to Dismiss for Lack of Jurisdiction filed by Adobe Sysems Incorporated. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibits B and C, # <u>3</u> Exhibit D, # <u>4</u> Exhibits E through I)(Drey, Nicole) (Filed on 1/20/2010) (Entered: 01/20/2010)
01/26/2010	 <u>18</u>	Reply to <u>17</u> Opposition to MOTION to Dismiss for Lack of Jurisdiction filed by Joshua Christenson, Software Surplus, Inc. (Attachments: # <u>1</u> Exhibit Exhibits A and B) (Rasmussen, Lisa) (Filed on 1/26/2010) Modified on 1/27/2010 (vlk, COURT STAFF). (Entered: 01/26/2010)
01/28/2010	 <u>19</u>	MOTION permission to file overlength brief re <u>18</u> Reply to Opposition filed by Joshua Christenson, Software Surplus, Inc. Motion Hearing set for 2/10/2010 09:00 AM in Courtroom 3, 3rd Floor, Oakland. (Rasmussen, Lisa) (Filed on 1/28/2010) (Entered: 01/28/2010)
01/28/2010	 <u>20</u>	Memorandum In Support Of Motion For Overlength Brief re <u>19</u> MOTION permission to file overlength brief filed by Joshua Christenson, Software Surplus, Inc. Motion Hearing set for 2/10/2010 09:00 AM in Courtroom 3, 3rd Floor, Oakland. (Rasmussen, Lisa) (Filed on 1/28/2010) Modified on 1/29/2010 (vlk, COURT STAFF). (Entered: 01/28/2010)
01/28/2010	 <u>21</u>	Proposed Order re <u>19</u> MOTION permission to file overlength brief re <u>18</u> Reply to Opposition by Joshua Christenson, Software Surplus, Inc. (Rasmussen, Lisa) (Filed on 1/28/2010) (Entered: 01/28/2010)
02/10/2010	 <u>22</u>	Minute Entry: Motion Hearing held on 2/10/2009 before Phyllis J. Hamilton (Date Filed: 2/10/2010) re <u>14</u> MOTION to Dismiss for Lack of Jurisdiction filed by Software Surplus, Inc, Joshua Christenson. (Court Reporter Sarah Goekler.) (nah, COURT STAFF) (Date Filed: 2/10/2010) (Entered: 02/10/2010)
02/17/2010	 <u>23</u>	ADR Clerks Notice re: Non-Compliance with Court Order. (tjs, COURT STAFF) (Filed on 2/17/2010) (Entered: 02/17/2010)
02/17/2010	 <u>24</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Coombs, J.) (Filed on 2/17/2010) (Entered: 02/17/2010)
02/25/2010	 <u>25</u>	JOINT CASE MANAGEMENT STATEMENT filed by Adobe Sysems Incorporated, Joshua Christenson, Software Plus, Inc.. (Drey, Nicole) (Filed on 2/25/2010) Modified on 2/26/2010 (vlk, COURT STAFF). (Entered: 02/25/2010)
02/25/2010	 <u>26</u>	STIPULATION and Proposed Order selecting Mediation by Adobe Sysems Incorporated (Drey, Nicole) (Filed on 2/25/2010) (Entered: 02/25/2010)

03/03/2010	 <u>27</u>	ORDER CONTINUING CMC. Signed by Judge Hamilton on 3/3/10. (pjhlc3, COURT STAFF) (Filed on 3/3/2010) (Entered: 03/03/2010)
03/03/2010		***3/4/2010 hearing terminated. (vlk, COURT STAFF) (Filed on 3/3/2010) (Entered: 03/04/2010)
03/08/2010	 <u>28</u>	STIPULATION AND ORDER SELECTING ADR PROCESS (MEDIATION) re <u>26</u> Stipulation and Proposed Order selecting Mediation filed by Adobe Sysems Incorporated, Case referred to mediation. Signed by Judge Phyllis J. Hamilton on 3/8/10. (nah, COURT STAFF) (Filed on 3/8/2010) (Entered: 03/08/2010)
03/08/2010	 <u>29</u>	ORDER by Judge Hamilton granting in part and denying in part <u>14</u> Motion to Dismiss or, in the Alternative, Motion to Transfer; finding as moot <u>19</u> Motion for Leave to File Oversize Brief. (pjhlc1, COURT STAFF) (Filed on 3/8/2010) (Entered: 03/08/2010)
03/08/2010		(Court only) ***Civil Case Terminated. (vlk, COURT STAFF) (Filed on 3/8/2010) Modified on 3/22/2010 (vlk, COURT STAFF). (Entered: 03/10/2010)
03/23/2010	 <u>30</u>	Sent certified copy of docket sheet and transfer Order to USDC District of Nevada, Las Vegas. (vlk, COURT STAFF) (Filed on 3/23/2010) (Entered: 03/23/2010)

United States District Court

For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

I hereby certify that the annexed
instrument is a true and correct copy of
the original on file in my office.
ATTEST

RICHARD W WIEKING
Clerk, U.S. District Court
Northern District of California

By [Signature]
Date 3/23/10 Deputy Clerk

ADOBE SYSTEMS INCORPORATED,

Plaintiff,

No. C 09-5169 PJH

v.

**ORDER DENYING MOTION TO
DISMISS AND GRANTING MOTION
TRANSFER**

JOSHUA CHRISTENSON, et al.,

Defendants.

Defendants' motion to dismiss the above entitled action for lack of personal jurisdiction or improper venue, or in the alternative, motion to transfer the case to the District of Nevada, came on for hearing before this court on February 10, 2010. Plaintiff appeared by its counsel Nichole L. Drey, and defendants appeared by their counsel Lisa Rasmussen. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby DENIES the motions to dismiss, and GRANTS the motion to transfer venue.

Plaintiff Adobe Systems Incorporated ("Adobe") filed this copyright and trademark infringement action against defendants Joshua Christenson ("Christenson")¹ and Software Surplus, Inc. ("SSI"). Adobe is a Delaware corporation, with its principal place of business in San Jose, California. Christenson resides in Nevada, and is an officer of SSI, a

¹ Adobe sued Christenson as "Joshua Christenson, an individual and d/b/a softwaresurplus.com."

1 Nevada corporation. SSI owns and operates a website, www.softwaresurplus.com. Adobe
2 asserts that defendants have been engaging in the unlawful and unauthorized distribution
3 and use of Adobe's products in interstate commerce, through sales on the
4 softwaresurplus.com website.

5 Defendants now seek an order dismissing the complaint, or, in the alternative,
6 transferring the action to the District of Nevada. Defendants argue that the action must be
7 dismissed because court lacks personal jurisdiction over them, and because venue is
8 improper in this district under the general venue statute, 28 U.S.C. § 1391(b) (as to the
9 trademark infringement claim), and also under the copyright venue statute, 28 U.S.C.
10 § 1400 (as to the copyright infringement claim). In the alternative, defendants seek transfer
11 to the District of Nevada under either 28 U.S.C. § 1406(a) or 28 U.S.C. § 1404(a).

12 With regard to personal jurisdiction, Adobe does not dispute that the court lacks
13 general jurisdiction over defendants. Adobe does contend, however, that the court has
14 specific jurisdiction. The court finds that under the standard applied in Zippo Mfg. Co. v.
15 Zippo Dot Com, Inc., 952 F.Supp. 1119, 1123-27 (W.D. Pa. 1997), this court has specific
16 jurisdiction over SSI in California (though not over Christenson).

17 With regard to venue,² the court finds that Adobe has not established that venue is
18 proper in this district as to Christenson. The showing with regard to SSI is less clear, but
19 given Adobe's failure to establish that a substantial part of the events or omissions giving
20 rise to the trademark infringement claim occurred in this judicial district, Adobe has
21 arguably not established that venue is proper with regard to SSI under § 1391(b).

22 Similarly, the court finds that Adobe has not established that SSI "may be found" in
23

24 ² Under the general venue statute, a civil action in which jurisdiction is not founded on
25 diversity of citizenship may be brought only in (1) a judicial district where any defendant
26 resides, if all defendants reside in the same state, (2) a judicial district in which a substantial
27 part of the events or omissions giving rise to the claim occurred, or a substantial part of the
28 property that is the subject of the action is situated, or (3) a judicial district in which any
defendant may be found, if there is no district in which the action may otherwise be brought.
28 U.S.C. § 1391(b). Under the copyright venue statute, a civil action arising under the
copyright laws may be instituted in the district in which the defendant or his agent resides or
may be found. 28 U.S.C. § 1400(a).

1 this district. Under § 1400(a), a defendant "may be found" in a particular district of a
2 multi-district state only where its contacts with the particular district would support personal
3 jurisdiction, without regard to the defendant's presence elsewhere in the state. See
4 Columbia Pictures Television v. Krypton Broadcasting, 106 F.3d 284, 289 (9th Cir. 1997).
5 Adobe has not made a showing sufficient to establish that SSI "may be found" in the
6 Northern District of California.³

7 Accordingly, the court DENIES the motion to dismiss for lack of personal jurisdiction,
8 DENIES the motion to dismiss for improper venue, and GRANTS the motion to transfer the
9 case to the District of Nevada pursuant to 28 U.S.C. § 1406(a). Pursuant to Civil Local
10 Rule 3-14, the transfer is effective 14 days after the date of filing of this order.

11
12 **IT IS SO ORDERED.**

13 Dated: March 8, 2010

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15 _____
16 PHYLLIS J. HAMILTON
17 United States District Judge
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27 _____
28 ³ At the hearing, counsel for Adobe for the first time raised the issue of jurisdictional
discovery. The court does not consider this request, as it was not briefed in connection with
Adobe's opposition to plaintiffs' motions.